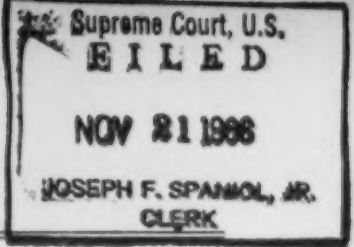


(2)  
No. 86-750



**In the Supreme Court**  
OF THE  
**United States**

OCTOBER TERM 1986

SIMPSON PAPER COMPANY,  
*Petitioner,*

VS.

DIVISION OF OCCUPATIONAL SAFETY AND HEALTH  
OF THE  
DEPARTMENT OF INDUSTRIAL RELATIONS FOR THE  
STATE OF CALIFORNIA,  
*Respondent.*

**SUPPLEMENTAL BRIEF IN SUPPORT OF  
PETITION FOR A WRIT OF  
CERTIORARI TO THE COURT OF  
APPEAL OF THE STATE OF CALIFORNIA  
IN AND FOR THE THIRD APPELLATE DISTRICT**

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*Simpson Paper Company*



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Petitioner, Simpson Paper Company (hereinafter also referred to as "Simpson" or the "Employer"), respectfully submits this supplemental brief in support of its petition for a writ of certiorari to the Court of Appeal of the State of California in and for the Third Appellate District. Simpson's petition for a writ of certiorari was docketed in this Court on November 7, 1986.<sup>1</sup>

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<sup>1</sup>Simpson's rule 28.1 list is set forth at page i of its petition for a writ of certiorari.

On November 10, 1986, this Court noted probable jurisdiction in *Fort Halifax Packing Company, Inc. v. Marvin W. Ewing*, Case No. 86-1-341 ASX (hereinafter "*Fort Halifax*".) The Employer became aware of the case shortly thereafter when the Court's decision was reported in the New York Times and in the Bureau of National Affairs' Daily Labor Report.

In *Fort Halifax*, this Court noted probable jurisdiction with respect to a question which is virtually identical to the issue raised by Simpson in the instant case (hereinafter also the "*Simpson* case"). The question presented in *Fort Halifax* is as follows:

Whether the National Labor Relations Act, 29 U.S.C. § 141 *et seq.*, preempts a state statute that discriminates against unionized employers (i) by compelling them to reach an agreement on a mandatory subject of bargaining (severance pay) or incur specified liability and (ii) by allowing nonunion employers unilaterally to avoid the specified liability.

Jurisdictional statement of *Fort Halifax Packing Company, Inc.*, p. i.<sup>2</sup> The question presented in the *Simpson* case is:

Whether federal labor law preempts a state agency's order where that order is contrary to the employer's collective bargaining agreement and an arbitration award under that agreement and where the order attempts to alter the economic terms of the agreement.

Petition for a writ of certiorari of *Simpson*, p. i.

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<sup>2</sup>The other question in *Fort Halifax*, whether the Employee Retirement Income Security Act preempts the state statute, is not related to the *Simpson* case.

In each case, the state, for allegedly salutary reasons, has rewritten the collective bargaining agreement between an employer engaged in commerce and the union representing its employees *by altering* a mandatory subject of bargaining. Moreover, in each case, the mandatory subject of bargaining is part of the parties' economic settlement, *i.e.* the "wage package", undeniably the heart of any collective bargaining agreement.

In *Fort Halifax*, the State of Maine has attempted to require the employer to include a severance pay provision in its contract with the union. In the *Simpson* case, the State of California, *without claiming there was a safety-related reason* until the case reached the state Supreme Court<sup>3</sup>, has attempted to require that the Employer pay the entire cost of its employees' safety shoes despite the Employer's collective bargaining agreement with the union and an Arbitrator's decision which made it clear the Employer's economic obligation is substantially less.

Moreover, in *Fort Halifax*, the collective bargaining agreement was silent with respect to severance pay, lending superficial credence to the state's claim that it did not "change" the parties' agreement on the subject. *Bureau of Labor Standards v. Fort Halifax Packing Company*, 510 A. 2d 1054, 1057 (1986). In the *Simpson* case, however, the collective bargaining agreement was far from silent on the safety shoe issue. The contract in *Simpson* was interpreted by an established labor Arbitrator to require only the payment of a nominal portion of the cost of the safety shoes, and the Employer and union negotiated with respect to the very issue, *i.e.*, the amount the Employer was to contribute toward a pair of shoes. Petition for a writ of

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<sup>3</sup>Even then, the state's after the fact argument was extremely weak and speculative, suggesting only that employees "may hesitate", whatever that means, to replace the equipment. Answer to Petition for Review, p. 10.

certiorari of Simpson, pp. 4-5, 8. Consequently, the *Simpson* case presents an even more compelling need for this Court's review.

In sum, this Court's decision to review *Fort Halifax* underscores the validity of Simpson's position with respect to its petition for a writ of certiorari.<sup>4</sup> Moreover, in the event *Fort Halifax*' position is sustained on review, Simpson could be in the position of having been absolutely correct as a matter of law, but unable even to cite *Fort Halifax*, as Simpson's litigation would have become final. To avoid such an unfair situation, and for the reasons set forth in this supplemental brief and in Simpson's petition for a writ of certiorari, it is respectfully submitted that Simpson's petition for a writ of certiorari be granted.

Respectfully submitted,

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<sup>4</sup>In light of the virtually identical legal issues raised in both cases, *Fort Halifax* and *Simpson* could be argued together or consecutively.

## **PROOF OF SERVICE BY MAIL**

I am a citizen of the United States and a resident of the City and County of Los Angeles; I am over the age of eighteen years and not a party to the within action; my business address is: 1706 Maple Avenue, Los Angeles, California.

On November 21, 1986, I served the within Supplemental Brief in re: "Simpson Paper Company vs. Division of Occupational Safety and Health of the Department of Industrial Relations for the State of California" in the United States Supreme Court, October Term 1986, No. 86-750;

on the Parties in said action, by placing three copies thereof enclosed in a sealed envelope with postage fully prepaid, in the United States post office mail box at Los Angeles, California, addressed as follows:

Michael D. Mason  
Division of Occupational Safety and Health  
525 Golden Gate Avenue, Room 616  
San Francisco, California 94102

All Parties required to be served have been served.



I certify (or declare), under penalty of perjury, that the foregoing is true and correct.

Executed on November 21, 1986, at Los Angeles,  
California

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